

Senate Bill No. 1737

Passed the Senate August 20, 2008

Secretary of the Senate

Passed the Assembly August 18, 2008

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 10176 of, and to add Sections 10087 and 10177.6 to, the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 1737, Machado. Real estate: brokers and salespersons.

Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and real estate salespersons by the Real Estate Commissioner and provides that a willful violation of that law is a crime. Existing law authorizes the commissioner to direct a person to desist and refrain from activities that are in violation of that law, as specified, and also authorizes the commissioner to suspend or revoke the license of a real estate licensee who performs or has been guilty of specified acts.

This bill would authorize the commissioner to suspend or bar a person from a position of employment, management, or control for a specified period if the commissioner finds that the suspension or bar is in the public interest and that the person has committed or caused a violation of the Real Estate Law or a rule or order of the commissioner, as specified. The bill would also authorize the commissioner to impose that discipline if the person has been convicted of, or pleaded nolo contendere to, a crime or been held liable in a civil action by final judgment, or any administrative judgment by any public agency, if the crime or civil or administrative judgment involves an offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business. In addition, the bill would authorize the commissioner to suspend or revoke the license of a real estate licensee who has been guilty of generating an inaccurate opinion of the value of residential real property, requested in connection with a debt forgiveness sale, in order to manipulate the lienholder to reject the proposed debt forgiveness sale or to acquire a financial or business advantage, as specified, or both.

Existing law requires listing and selling agents, as defined, to provide sellers and buyers in a residential real property transaction

with a disclosure form, as prescribed, containing general information on real estate agency relationships. Existing law also requires the listing or selling agent to disclose to the buyer and seller whether he or she is acting as the buyer's agent exclusively, the seller's agent exclusively, or as a dual agent representing both the buyer and the seller.

This bill would require a person or entity that arranges financing in connection with a sale, lease, or exchange of real property and acts as an agent with respect to that property to make a written disclosure of those roles, within 24 hours, to all parties to the sale, lease, or exchange and any related loan transaction.

By imposing additional requirements under the Real Estate Law, the willful violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 10087 is added to the Business and Professions Code, to read:

10087. (a) In addition to acting pursuant to the authority provided under Sections 10086, 10176, and 10177, the commissioner may, after appropriate notice and opportunity for a hearing, by order, suspend, or bar from any position of employment, management, or control, for a period not exceeding 36 months, a real estate salesperson or real estate broker, or an unlicensed person issued an order under Section 10086, if the commissioner finds either of the following:

(1) That the suspension or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the public.

(2) That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action

by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business in accordance with the provisions of this division.

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Division 3 of Title 2 of the Government Code). If no hearing is requested within 15 days after the mailing or service of that notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any business activity involving real estate that is subject to regulation under this division.

(d) Persons suspended or barred under this section are prohibited from participating in any business activity of a real estate salesperson or a real estate broker and from engaging in any real estate-related business activity on the premises where a real estate salesperson or real estate broker is conducting business. Persons suspended or barred under this section are also prohibited from participating in any real estate-related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company.

SEC. 2. Section 10176 of the Business and Professions Code is amended to read:

10176. The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

(b) Making any false promises of a character likely to influence, persuade or induce.

(c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.

(d) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.

(e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.

(f) Claiming, demanding, or receiving a fee, compensation or commission under any exclusive agreement authorizing or employing a licensee to perform any acts set forth in Section 10131 for compensation or commission where the agreement does not contain a definite, specified date of final and complete termination.

(g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee's compensation, commission or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.

(h) The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing the licensee to sell, buy, or exchange real estate or a business opportunity for compensation or commission, except when the licensee prior to or coincident with election to exercise the option to purchase reveals in writing to the employer the full amount of licensee's profit and obtains the written consent of the employer approving the amount of the profit.

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(j) Obtaining the signature of a prospective purchaser to an agreement which provides that the prospective purchaser shall either transact the purchasing, leasing, renting or exchanging of a business opportunity property through the broker obtaining the

signature, or pay a compensation to the broker if the property is purchased, leased, rented or exchanged without the broker first having obtained the written authorization of the owner of the property concerned to offer the property for sale, lease, exchange or rent.

(k) Failing to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant when the real estate broker represents to the applicant that the broker is either of the following:

(1) The lender.

(2) Authorized to issue the commitment on behalf of the lender or lenders in the mortgage loan transaction.

(l) Intentionally delaying the closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(m) Generating an inaccurate opinion of the value of residential real property, requested in connection with a debt forgiveness sale, in order to do either or both of the following:

(1) Manipulate the lienholder to reject the proposed debt forgiveness sale.

(2) Acquire a financial or business advantage, including a listing agreement, that directly results from the inaccurate opinion of value, with regard to the subject property.

SEC. 3. Section 10177.6 is added to the Business and Professions Code, to read:

10177.6. When an agent undertakes to arrange financing in connection with a sale, lease, or exchange of real property, or when a person or entity arranging financing in connection with the sale, lease, or exchange of real property undertakes to act as an agent with respect to that property, that agent, person, or entity shall, within 24 hours, make a written disclosure of those roles to all parties to the sale, lease, or exchange, and any related loan transaction. For purposes of this section, “agent” has the same meaning as defined in subdivision (a) of Section 2079.13 of the Civil Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2008

Governor